

ROBERT S. ARNS
 (#65071, rsa@arnslaw.com)
 JONATHAN E. DAVIS
 (#191346, jed@arnslaw.com)
 STEVEN R. WEINMANN
 (#190956, srw@arnslaw.com)
 THE ARNS LAW FIRM
 515 Folsom Street, 3rd Floor
 San Francisco, CA 94105
 Tel: (415) 495-7800
 Fax: (415) 495-7888

COOLEY LLP
 MICHAEL G. RHODES (116127)
 (rhodesmg@cooley.com)
 MATTHEW D. BROWN (196972)
 (brownmd@cooley.com)
 JEFFREY M. GUTKIN (216083)
 (gutkinjm@cooley.com)
 101 California Street, 5th Floor
 San Francisco, CA 94111-5800
 Telephone: (415) 693-2000
 Facsimile: (415) 693-2222

JONATHAN M. JAFFE
 (# 267012, jmj@jaffe-law.com)
 JONATHAN JAFFE LAW
 3055 Hillegass Avenue
 Berkeley, CA 94705
 Tel: (510) 725-4293
 Fax: (510) 868-3393
 Attorneys for Plaintiffs

FACEBOOK, INC.
 COLIN S. STRETCH (205144) (colin@fb.com)
 SANDEEP N. SOLANKI (244005)
 (ssolanki@fb.com)
 1601 S. California Ave.
 Palo Alto, CA 94304
 Telephone: (650) 853-1300
 Facsimile: (650) 543-4800
 Attorneys for Defendant FACEBOOK, INC.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

ANGEL FRALEY; PAUL WANG; SUSAN
 MAINZER; JAMES H. DUVAL, a minor, by
 and through JAMES DUVAL, as Guardian ad
 Litem; and WILLIAM TAIT, a minor, by and
 through RUSSELL TAIT, as guardian ad Litem;
 individually and on behalf of all others similarly
 situated,

Plaintiffs,

v.

FACEBOOK, INC, a corporation; and DOES 1-
 100,

Defendants.

Case No. 11-CV-01726 LHK (PSG)

**STIPULATED PROTECTIVE ORDER FOR
 LITIGATION INVOLVING HIGHLY
 SENSITIVE CONFIDENTIAL INFORMATION
 AND/OR TRADE SECRETS**

Courtroom: 4
 Judge: Hon. Lucy H. Koh
 Trial date: None Set

1

2 **1. PURPOSES AND LIMITATIONS**

3 Disclosure and discovery activity in this action are likely to involve production of
 4 confidential, proprietary, or private information for which special protection from public
 5 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
 6 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
 7 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
 8 all disclosures or responses to discovery and that the protection it affords from public disclosure
 9 and use extends only to the limited information or items that are entitled to confidential treatment
 10 under the applicable legal principles. The parties further acknowledge, as set forth in Section
 11 13.3, below, that this Stipulated Protective Order does not entitle them to file confidential
 12 information under seal; Civil Local Rule 79-5 and General Order 62 set forth the procedures that
 13 must be followed and the standards that will be applied when a party seeks permission from the
 14 court to file material under seal.

15 **2. DEFINITIONS**

16 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
 17 information or items under this Order.

18 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
 19 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
 20 of Civil Procedure 26(c).

21 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
 22 well as their support staff).

23 2.4 Designating Party: a Party or Non-Party that designates information or items that it
 24 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
 25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

26 2.5 Disclosure or Discovery Material: all items or information, regardless of the
 27 medium or manner in which it is generated, stored, or maintained (including, among other things,
 28 documents, interrogatory responses, responses to requests for admission, testimony, transcripts,

1 and tangible things), that are produced or generated in disclosures or responses to discovery in
2 this matter.

3 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
4 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or
5 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's
6 competitor, and (3) at the time of retention, is not, in good faith, reasonably anticipated to become
7 an employee of a Party or of a Party's competitor.

8 2.7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
9 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another
10 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
11 less restrictive means.

12 2.8 House Counsel: attorneys (and their support staff) who are employees of a party to
13 this action. House Counsel does not include Outside Counsel of Record or any other outside
14 counsel.

15 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal
16 entity not named as a Party to this action.

17 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this
18 action but are retained to represent or advise a party to this action and have appeared in this action
19 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

20 2.11 Party: any party to this action, including all of its officers, directors, employees,
21 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

22 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
23 Material in this action.

24 2.13 Professional Vendors: persons or entities that provide litigation support services
25 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
26 organizing, storing, or retrieving data in any form or medium) and their employees and
27 subcontractors.

28

1 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
2 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

3 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
4 Producing Party.

5 **3. SCOPE**

6 The protections conferred by this Stipulation and Order cover not only Protected Material
7 (as defined above), but also (1) any information copied or extracted from Protected Material;
8 (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
9 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
10 However, the protections conferred by this Stipulation and Order do not cover the following
11 information: (a) any information that is in the public domain at the time of disclosure to a
12 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
13 a result of publication not involving a violation of this Order; and (b) any information known to
14 the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure
15 from a source who obtained the information lawfully and under no obligation of confidentiality to
16 the Designating Party. Any use of Protected Material at trial shall be governed by a separate
17 agreement or order. The Parties agree that this Order does not sufficiently address the protection
18 of source code. If source code is sought in discovery, the Parties will seek an additional
19 Stipulated Order to protect disclosure of source code information.

20 **4. DURATION**

21 Even after final disposition of this litigation, the confidentiality obligations imposed by
22 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
23 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
24 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
25 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
26 including the time limits for filing any motions or applications for extension of time pursuant to
27 applicable law. After the final disposition of this action, this court will retain jurisdiction to
28 enforce the terms of this protective order.

1 **5. DESIGNATING PROTECTED MATERIAL**

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
3 or Non-Party that designates information or items for protection under this Order must take care
4 to limit any such designation to specific material that qualifies under the appropriate standards.
5 To the extent it is practical to do so, the Designating Party must designate for protection only
6 those parts of material, documents, items, or oral or written communications that qualify – so that
7 other portions of the material, documents, items, or communications for which protection is not
8 warranted are not swept unjustifiably within the ambit of this Order.

9 Mass, routinized, or indiscriminate designations are prohibited. Designations that have
10 been made for an improper purpose (e.g., to unnecessarily encumber or retard the case
11 development process or to impose unnecessary expenses and burdens on other parties) may
12 expose the Designating Party to sanctions upon sufficient findings as required under existing
13 provisions of the Federal Rules of Civil Procedure.

14 If it comes to a Designating Party's attention that information or items that it designated
15 for protection do not qualify for protection at all or do not qualify for the level of protection
16 initially asserted, that Designating Party must promptly notify all other parties that it is
17 withdrawing the mistaken designation.

18 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
19 (*see, e.g.,* second paragraph of Section 5.2(a) below), or as otherwise stipulated or ordered,
20 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
21 designated before the material is disclosed or produced.

22 Designation in conformity with this Order requires:

23 (a) for information in documentary form (e.g., paper or electronic documents,
24 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
25 Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
26 EYES ONLY" to each page that contains protected material. For documents produced in native
27 format, the Producing Party shall append "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL"
28 to the filename.

1 A Party or Non-Party that makes original documents or materials available for inspection
2 need not designate them for protection until after the inspecting Party has indicated which
3 material it would like copied and produced. During the inspection and before the designation, all
4 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
5 ATTORNEYS’ EYES ONLY”. After the inspecting Party has identified the documents it wants
6 copied and produced, the Producing Party must determine which documents, or portions thereof,
7 qualify for protection under this Order. Then, before producing the specified documents, the
8 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that contains Protected
10 Material.

11 (b) for testimony given in deposition or in other pretrial or trial proceedings,
12 that the Designating Party identifies on the record or up to 30 days after the completion of the
13 deposition, whether protection is sought and the level of protection being asserted. Only those
14 portions of the testimony that are appropriately designated for protection within the 30 days shall
15 be covered by the provisions of this Stipulated Protective Order. If no designation is made at the
16 deposition, the transcript shall be treated as “HIGHLY CONFIDENTIAL – ATTORNEYS’
17 EYES ONLY” during the 30-day period referenced above. Alternatively, a Designating Party
18 may specify, at the deposition or up to 30 days afterwards, that the entire transcript shall be
19 treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.
20 After the expiration of that period, the transcript shall be treated only as actually designated.

21 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
22 other proceeding to include Protected Material so that the other parties can ensure that only
23 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
24 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
25 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY
26 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

27 Transcripts containing Protected Material shall have an obvious legend on the title page
28 that the transcript contains Protected Material. The Designating Party shall inform the court

1 reporter of these requirements.

2 (c) for information produced in some form other than documentary and for any
3 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
4 container or containers in which the information or item is stored the legend “CONFIDENTIAL”
5 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. If only a portion or portions
6 of the information or item warrant protection, the Producing Party, to the extent practicable, shall
7 identify the protected portion(s) and specify the level of protection being asserted.

8 5.3 Inadvertent Failures to Designate. An inadvertent failure to designate qualified
9 information or items does not, standing alone, waive the Designating Party’s right to secure
10 protection under this Order for such material. Upon timely correction of a designation after the
11 incorrect designation is actually discovered by the Designating Party, the Receiving Party must
12 make reasonable efforts to assure that the material is treated in accordance with the provisions of
13 this Order.

14 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

15 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
16 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
17 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
18 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
19 challenge a confidentiality designation by electing not to mount a challenge promptly after the
20 original designation is disclosed.

21 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
22 process by providing written notice of each designation it is challenging and describing the basis
23 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
24 notice must recite that the challenge to confidentiality is being made in accordance with this
25 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
26 good faith and must begin the process by conferring within 14 days of the date of service of
27 notice. In conferring, the Challenging Party must explain the basis for its belief that the
28 confidentiality designation was not proper and must give the Designating Party an opportunity to

1 review the designated material, to reconsider the circumstances, and, if no change in designation
 2 is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to
 3 the next stage of the challenge process only if it has engaged in this meet and confer process first
 4 or establishes that the Designating Party is unwilling to participate in the meet and confer process
 5 in a timely manner.

6 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
 7 intervention, the Challenging Party may file a motion challenging a confidentiality designation at
 8 any time if there is good cause for doing so, including a challenge to the designation of a
 9 deposition transcript or any portions thereof. Any motion brought pursuant to this provision must
 10 be accompanied by a competent declaration affirming that the movant has complied with the meet
 11 and confer requirements imposed by the preceding paragraph.

12 The burden of persuasion in any such challenge proceeding shall be on the Designating
 13 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
 14 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
 15 sanctions. All parties shall continue to afford the material in question the level of protection to
 16 which it is entitled under the Producing Party's designation until the court rules on the challenge.

17 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

18 7.1 Basic Principles. A Receiving Party and/or Receiving Party's counsel may access
 19 and use (only insofar as more specifically provided in this Order) Protected Material that is
 20 disclosed or produced by another Party or by a Non-Party in connection with this case only for
 21 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
 22 disclosed only to the categories of persons and under the conditions described in this Order.
 23 When the litigation has been terminated, a Receiving Party must comply with the provisions of
 24 Section 14 below (FINAL DISPOSITION).

25 Protected Material must be stored and maintained by Receiving Party and Receiving
 26 Party's counsel at a location and in a secure manner¹ that ensures that access is limited to the

27
 28 ¹ It may be appropriate under certain circumstances to require the Receiving Party to store any electronic Protected
 Material in password-protected form.

1 persons authorized under this Order.

2 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
3 ordered by the court or permitted in writing by the Designating Party, any information or item
4 designated "CONFIDENTIAL" by the Designating Party shall be disclosed only to:

5 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
6 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
7 information for this litigation;

8 (b) the officers, directors, and employees (including House Counsel) of the
9 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
10 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A) (for the sake of clarity,
11 the parties agree that "CONFIDENTIAL" information or items shall not be disclosed to the
12 named plaintiffs in this action);

13 (c) Experts (as defined in this Order) of the Receiving Party to whom
14 disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment
15 and Agreement to Be Bound" (Exhibit A) and as to whom the procedures set forth in Section
16 7.4(a), below, have been followed;

17 (d) the court and its personnel;

18 (e) court reporters and their staff, professional jury or trial consultants, and
19 Professional Vendors to whom disclosure is reasonably necessary for this litigation; and

20 (f) the author or recipient of a document containing the information or a
21 custodian or other person who otherwise possessed or knew the information.

22 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
23 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
24 Designating Party, any information or item designated "HIGHLY CONFIDENTIAL –
25 ATTORNEYS' EYES ONLY" by the Designating Party shall be disclosed only to:

26 (a) the Receiving Party's Counsel in this action, as well as employees of said
27 Counsel to whom it is reasonably necessary to disclose the information for this litigation (for the
28

sake of clarity, the parties agree that “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information or items shall not be disclosed to the named plaintiffs in this action);

(b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in Section 7.4(a), below, have been followed;

(c) the court and its personnel;

(d) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

(e) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.4 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information or items may be disclosed to an Expert without disclosure of the identity of the Expert as long as the Expert is not a current officer, director, employee, or consultant of a competitor of a Party or anticipated to become one.

(a) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) who is a current officer, director or employee of a competitor of a Party or anticipated to become one, any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to Section 7.3(b) first must make a written request to the Designating Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity from whom the Expert has received compensation or funding for work in his or her areas of expertise or to whom the expert has provided professional services,

1 including in connection with a litigation, at any time during the preceding five years,² and (6)
 2 identifies (by name and number of the case, filing date, and location of court) any litigation in
 3 connection with which the Expert has offered expert testimony, including through a declaration,
 4 report, or testimony at a deposition or trial, during the preceding five years.

5 (b) A Party that makes a request and provides the information specified in
 6 Section 7.4(a) may disclose the subject Protected Material to the identified Expert 15 days after
 7 making its 7.4(a) disclosure unless, within 14 days of delivering the request, the Party receives a
 8 written objection from the Designating Party. Any such objection must set forth in detail the
 9 grounds on which it is based.

10 (c) A Party that receives a timely written objection must meet and confer with
 11 the Designating Party to try to resolve the matter by agreement within seven days of the written
 12 objection. If no agreement is reached, the Party seeking to make the disclosure to the Expert may
 13 file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
 14 applicable) seeking permission from the court to do so. Any such motion must describe the
 15 circumstances with specificity, set forth in detail the reasons why the disclosure to the Expert is
 16 reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any
 17 additional means that could be used to reduce that risk. In addition, any such motion must be
 18 accompanied by a competent declaration describing the parties' efforts to resolve the matter by
 19 agreement (*i.e.*, the extent and the content of the meet and confer discussions) and setting forth
 20 the reasons advanced by the Designating Party for its refusal to approve the disclosure. The Party
 21 opposing the disclosure may file a formal opposition with the Court within 14 days of the motion.

22 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden
 23 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
 24 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

25
 26
 27 ² If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the
 28 Expert should provide whatever information the Expert believes can be disclosed without violating any
 confidentiality agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with
 the Designating Party regarding any such engagement.

(d) Notwithstanding the above, Discovery Material may be provided to experts or consultants only to the extent necessary for such expert or consultant to prepare a written opinion, to prepare to testify, or to assist counsel or the Parties, provided that such expert or consultant is using said Discovery Material solely in connection with this Litigation, and further provided that such expert or consultant has previously executed an undertaking in the form attached hereto as Exhibit A, agreeing in writing to be bound by the terms and conditions of this Stipulation, consenting to the jurisdiction of this Court for purposes of enforcement of the terms of this Stipulation, and agreeing not to disclose or use any Discovery Material for purposes other than those permitted hereunder.

8. PROSECUTION BAR

Absent written consent from the Producing Party, any individual who receives access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information of the opposing party shall not be involved in the prosecution of patents or patent applications relating to the subject matter of the “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information he or she received before any foreign or domestic agency, including the United States Patent and Trademark Office (“the Patent Office”). For purposes of this paragraph, “prosecution” includes directly or indirectly drafting, amending, advising, or otherwise affecting the scope or maintenance of patent claims. To avoid any doubt, “prosecution” as used in this paragraph does not include representing a party challenging a patent before a domestic or foreign agency (including, but not limited to, a reissue protest, *ex parte* reexamination or *inter partes* reexamination). This Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information is first received by the affected individual and shall end five (5) years after final termination of this action.

9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

1 (a) promptly notify in writing the Designating Party. Such notification shall
2 include a copy of the subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena or order to
4 issue in the other litigation that some or all of the material covered by the subpoena or order is
5 subject to this Protective Order. Such notification shall include a copy of this Stipulated
6 Protective Order; and

7 (c) cooperate with respect to all reasonable procedures sought to be pursued by
8 the Designating Party whose Protected Material may be affected.

9 If the Designating Party timely seeks a protective order, the Party served with the
10 subpoena or court order shall not produce any information designated in this action as
11 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a
12 determination by the court from which the subpoena or order issued, unless the Party has obtained
13 the Designating Party’s permission. The Designating Party shall bear the burden and expense of
14 seeking protection in that court of its confidential material – and nothing in these provisions
15 should be construed as authorizing or encouraging a Receiving Party in this action to disobey a
16 lawful directive from another court.

17 **10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
18 **THIS LITIGATION**

19 (a) The terms of this Order are applicable to information produced by a Non-
20 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
21 ATTORNEYS’ EYES ONLY”. Such information produced by Non-Parties in connection with
22 this litigation is protected by the remedies and relief provided by this Order. Nothing in these
23 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

24 (b) In the event that a Party is required, by a valid discovery request, to
25 produce a Non-Party’s confidential information in its possession, and the Party is subject to an
26 agreement with the Non-Party not to produce the Non-Party’s confidential information, then the
27 Party shall:

- 28 1. promptly notify in writing the Requesting Party and the Non-Party

1 that some or all of the information requested is subject to a confidentiality agreement with a Non-
2 Party;

3 2. promptly provide the Non-Party with a copy of the Stipulated
4 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
5 description of the information requested; and

6 3. make the information requested available for inspection by the
7 Non-Party.

8 (c) If the Non-Party fails to object or seek a protective order from this court
9 within 14 days of receiving the notice and accompanying information, the Receiving Party may
10 produce the Non-Party's confidential information responsive to the discovery request. If the
11 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information
12 in its possession or control that is subject to the confidentiality agreement with the Non-Party
13 before a determination by the court.³ Absent a court order to the contrary, the Non-Party shall
14 bear the burden and expense of seeking protection in this court of its Protected Material.

15 **11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

16 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
17 Material to any person or in any circumstance not authorized under this Stipulated Protective
18 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
19 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
20 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
21 made of all the terms of this Order, and (d) request such person or persons to execute the
22 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

23 **12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE** 24 **PROTECTED MATERIAL**

25 If Discovery Material that is subject to a claim of attorney-client privilege, attorney work
26 product protection, or any other applicable privilege is inadvertently produced or disclosed

27
28 ³ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 (“Inadvertent Production Material”), such inadvertent production shall in no way prejudice or
2 otherwise constitute a waiver of, or estoppel as to, any claim of attorney-client privilege, attorney
3 work product protection, or other applicable privilege.

4 (a) If a claim of inadvertent production is made, pursuant to this Stipulated
5 Protective Order, with respect to Discovery Material then in the custody of another Party, that
6 Party shall: (i) refrain from any further examination or disclosure of the claimed Inadvertent
7 Production Material; (ii) promptly make a good-faith effort to return the claimed Inadvertent
8 Production Material and all copies thereof (including summaries and excerpts) to counsel for the
9 Producing Party, or destroy all such claimed Inadvertent Production Material (including
10 summaries and excerpts) and certify in writing to that fact; and (iii) not use the Inadvertent
11 Production Material for any purpose until further order of the Court expressly authorizing such
12 use.

13 (b) A Party may move the Court for an order compelling production of the
14 claimed Inadvertent Production Material. The motion shall be filed under seal and shall not assert
15 as a ground for entering such an order the fact or circumstance of the inadvertent production.
16 While such a motion is pending, the Discovery Material in question shall be treated in accordance
17 with paragraph 12(a) above.

18 (c) If a Party, in reviewing Discovery Material it has received from the other
19 Party or any non-Party, finds anything the reviewing Party believes in good faith may be
20 Inadvertent Production Material, that Party shall: (i) refrain from any further examination or
21 disclosure of the potentially Inadvertent Production Material; (ii) promptly identify the material in
22 question to the Producing Party (by document number or other equally precise description); and
23 (iii) give the Producing Party seven (7) days to respond as to whether the material was, in fact,
24 inadvertently produced. If the Producing Party makes a claim of inadvertent production, the
25 provisions of paragraph 12(a) above shall apply.

26

27

28

1 **13. MISCELLANEOUS**

2 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
3 seek its modification by the court in the future.

4 13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
5 Order no Party waives any right it otherwise would have to object to disclosing or producing any
6 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
7 no Party waives any right to object on any ground to use in evidence of any of the material
8 covered by this Protective Order.

9 13.3 Filing Protected Material. Without written permission from the Designating Party
10 or a court order secured after appropriate notice to all interested persons, a Party may not file in
11 the public record in this action any Protected Material. A Party that seeks to file under seal any
12 Protected Material must comply with Civil Local Rule 79-5 and General Order 62. Protected
13 Material may only be filed under seal pursuant to a court order authorizing the sealing of the
14 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue
15 only upon a request establishing that the Protected Material at issue is privileged, protectable as a
16 trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to
17 file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then
18 the Receiving Party may file the Protected Material in the public record pursuant to Civil Local
19 Rule 79-5(e) unless otherwise instructed by the court.

20 **14. FINAL DISPOSITION**

21 Within 60 days after the final disposition of this action, as defined in Section 4, each
22 Receiving Party must return all Protected Material to the Producing Party or destroy such
23 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
24 compilations, summaries, and any other format reproducing or capturing any of the Protected
25 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
26 submit a written certification to the Producing Party (and, if not the same person or entity, to the
27 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all
28 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has

not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

IT IS SO STIPULATED.

Dated: August 23, 2011

COOLEY LLP

/s/ Matthew D. Brown

Matthew D. Brown
Attorneys for Defendant Facebook, Inc.

Dated: August 23, 2011

THE ARNS LAW FIRM

/s/ Steven R. Weinmann

Steven R. Weinmann

– and –

Dated: August 23, 2011

JONATHAN JAFFE LAW

/s/ Jonathan M. Jaffe

Jonathan M. Jaffe

Attorneys for Plaintiffs

IT IS SO ORDERED.

DATED: September 15, 2011

Paul S. Grewal

HON. PAUL S. GREWAL
UNITED STATES MAGISTRATE JUDGE

ATTESTATION PURSUANT TO GENERAL ORDER 45

I, Matthew D. Brown, attest that concurrence in the filing of this **STIPULATED PROTECTIVE ORDER FOR LITIGATION INVOLVING HIGHLY SENSITIVE CONFIDENTIAL INFORMATION AND/OR TRADE SECRETS** has been obtained from each of the other signatories. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 23rd day of August, 2011, at San Francisco, California.

/s/ Matthew D. Brown
Matthew D. Brown

EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of
 _____ [print or type full address],
 declare under penalty of perjury that I have read in its entirety and understand the Stipulated
 Protective Order that was issued by the United States District Court for the Northern District of
 California on _____ [date] in the case of *Angel Fraley, et al. v. Facebook, Inc.*,
 Case No. 11-cv-01726-LHK (PSG). I agree to comply with and to be bound by all the terms of
 this Stipulated Protective Order and I understand and acknowledge that failure to so comply could
 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
 not disclose in any manner any information or item that is subject to this Stipulated Protective
 Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
 Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full
 address and telephone number] as my California agent for service of process in connection with
 this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
 [printed name]

Signature: _____

966260 v1/HN